

APPENDIX C

FAMILY AND MEDICAL LEAVE

1. Purpose. This Appendix describes provisions of the Family and Medical Leave Act. The intent of the Family and Medical Leave Act (FMLA) is to:

(a) allow employees to balance their work and family lives by taking reasonable amounts of leave for medical reasons, for the birth or adoption/foster care of a child, and for the care of a child, spouse, or parent who has a serious health condition;

(b) to balance the demands of the workplace with the needs of families;

(c) to promote the stability and economic security of families; and

(d) to promote the national interest in preserving family integrity.

The Act establishes a clear Federal policy and ensures that all employees are treated fairly and equitably. The law is not intended to create a burden for the Federal government as an employer but is expected to produce significant benefits for the government from enhanced worker morale, productivity, and retention of quality employees.

2. Entitlements.

(a) Covered Federal employees (i.e., those who have completed 12 months of creditable civilian service as defined in para 3(j)) are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for one of the following reasons:

(1) the birth of a son or daughter of the employee and the care of the son or daughter;

(2) the placement of a son or daughter with the employee for adoption or foster care;

(3) the care of the employee's spouse, son, daughter, or parent, if the spouse, son, daughter, or parent has a serious health condition; or

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(4) A serious health condition of the employee that makes the employee unable to perform any one or more of the essential functions of his or her position.

(b) An employee must invoke his or her entitlement to family and medical leave subject to the notification and medical certification requirements. An employee may take only the amount of family and medical leave that is necessary to manage the circumstance that prompted the need for the leave.

(c) A father and mother are each entitled to 12 administrative workweeks of unpaid leave for a birth, adoption, or foster care or for the care of a son or daughter with a serious health condition.

(d) The 12-month period begins on the date an employee first takes leave for a covered family or medical need and continues for 12 months. An employee is not entitled to 12 additional workweeks of leave until the previous 12-month period ends and an event or situation occurs that entitles the employee to another period of family or medical leave. (This may include a continuation of a previous situation or circumstance.)

(e) The entitlement to a total of 12 administrative workweeks of leave for a birth, adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement. Leave for a birth or placement must be concluded within this 12-month period. Leave taken for a birth or placement may begin prior to or on the actual date of birth or placement for adoption or foster care and the 12-month period begins on that date.

(f) Leave is available to full-time and part-time employees. A total of 12 administrative workweeks will be made available equally for a full-time or part-time employee in direct proportion to the number of hours in the employee's regularly scheduled administrative workweek. The 12 administrative workweeks of leave will be calculated on an hourly basis and will equal 12 times the average number of hours in the employee's regularly scheduled administrative workweek. If the number of hours in an employee's workweek varies from week to week, a weekly average of the hours scheduled over the 12 weeks prior to the date leave commences will be used as the basis for this calculation. If the number of hours in an employee's regularly scheduled administrative workweek is changed during the 12-month

period of family and medical leave, the employee's entitlement to any remaining family and medical leave will be recalculated based on the number of hours in the employee's current regularly scheduled administrative workweek.

3. Explanation of Terms.

a. Adoption. Adoption refers to the legal process in which an individual becomes the legal parent of another's child. The source of an adopted child -- e.g., whether from a licensed placement agency or otherwise -- is not a factor in determining eligibility for leave under this program.

b. Foster Care. Foster care means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement by the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, which involves agreement between the State and foster family to take the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

c. Health Care Provider. Health care provider means:

(1) A licensed Doctor of Medicine or a Doctor of Osteopathy, or a physician who is serving on active duty in the uniformed services and is designated to conduct examinations for FMLA purposes.

(2) Any health care provider recognized by the Federal Employees Health Benefits Program or who is licensed or certified under Federal or State law to provide the service in question;

(3) A health care provider as defined in (2) above who practices in a country other than the United States, who is authorized to practice in accordance with the laws of that country, and who is performing within the scope of his or her practice as defined under such law;

(4) A Christian Science practitioner listed with the First Church of Christ, Scientists, in Boston, Massachusetts; or

(5) A Native American, including an Eskimo, Aleut, and Native Hawaiian, who is recognized as a traditional healing practitioner by native traditional religious leaders who practices traditional healing methods as believed, expressed, and exercised in Indian religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, consistent with applicable laws.

d. In loco parentis. In loco parentis refers to an individual who has day-to-day responsibility for the care and financial support of a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

e. Incapacity. Incapacity means the inability to work, attend school, or perform other regular daily activities because of a serious health condition or treatment for or recovery from a serious health condition.

f. Intermittent Leave or Leave Taken Intermittently. These terms mean leave taken in separate blocks of time rather than for one continuous period of time, and may include leave periods of one hour to several weeks.

g. Parent. Parent means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This term does not include parents "in law."

h. Reduced Leave Schedule. Reduced leave schedule means a work schedule under which the usual number of hours of regularly scheduled work per workday or workweek of an employee is reduced. The number of hours by which the daily or weekly tour of duty is reduced is counted as leave for the purpose of this subpart.

i. Serious Health Condition. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves:

(1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

(2) Continuing treatment by a health care provider that includes (but is not limited to) examinations to determine if there is a serious health condition and evaluations of such conditions if the examinations or evaluations determine that a serious health condition exists. Continuing treatment by a health care provider may include one or more of the following:

(a) A period of incapacity of more than 3 consecutive calendar days, including any subsequent treatment or period of incapacity relating to the same condition, that also involves:

1 Treatment two or more times by a health care provider, by a health care provider under the direct supervision of the affected individual's health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or

2 Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider (e.g., a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition).

(b) Any period of incapacity due to pregnancy, or for prenatal care, even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

(c) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that:

1 Requires periodic visits for treatment by health care provider or by a health care provider under the direct supervision of the affected individual's health care provider.

2 Continues over an extended period of time (including recurring episodes of a single underlying condition); and

3 May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). The condition is covered even if the affected individual does not receive active treatment from a health care provider during the period of incapacity or the period of incapacity does not last more than 3 consecutive calendar days.

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(d) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The affected individual must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider (e.g., Alzheimer's, severe stroke, or terminal stages of a disease).

(e) Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment (e.g., chemotherapy/radiation for cancer, physical therapy for severe arthritis, dialysis for kidney disease).

Serious health condition does not include routine physical, eye, or dental examinations; a regimen of continuing treatment that includes the taking of over-the-counter medications, bed rest, exercise, and other similar activities that can be initiated without a visit to the health care provider; a condition for which cosmetic treatments are administered, unless inpatient hospital care is required or unless complications develop; or an absence because of an employee's use of an illegal substance, unless the employee is receiving treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, and periodontal disease are not serious health conditions. Allergies, restorative dental or plastic surgery after an injury, removal of cancerous growth, or mental illness resulting from stress may be serious health conditions only if such conditions require inpatient care or continuing treatment by a health care provider.

j. Service Creditable toward the 12 Months of Service Requirement. Full-time and part-time service under civil service appointments is generally creditable provided the part-time service was performed under an established regular tour of duty during the administrative workweek. The 12 months need not be

continuous or recent. Up to 6 months of leave without pay is creditable for meeting the 12 months of service requirement. Service that is not creditable includes service under a temporary appointment or as an intermittent employee, service as an employee of the government of the District of Columbia, and military service (other than military duty performed while in a civilian position).

k. Son or Daughter. Son or daughter means a biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis who is:

(1) Under 18 years of age; or

(2) 18 years of age or older and incapable of self-care because of a mental or physical disability. A son or daughter incapable of self-care requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living (ADL's) or instrumental activities of daily living (IADL's). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, and using a post office, etc. A physical or mental disability refers to a physical or mental impairment that substantially limits one or more of the major life activities of an individual as defined in 29 CFR 1630.2(h), (i) and (j).

l. Spouse. Spouse means an individual who is a husband or wife pursuant to a marriage that is a legal union between one man and one woman, including common law marriage between one man and one woman in States where it is recognized.

4. Invoking Entitlement to Leave Under the FMLA. An employee shall invoke his or her entitlement to family or medical leave subject to the notification and medical certification requirements in paragraphs 5 and 7 below. An employee may not retroactively invoke his or her entitlement to leave under the FMLA for the previous absence from work. The district/regional office must confirm that an employee is invoking his or her

entitlement to FMLA leave before subtracting any hours of leave from the employee's entitlement to 12 administrative workweeks of leave.

5. Notice of Intent to Take Leave.

a. Time Limits for Notification When Need for Leave Is Foreseeable. When the need for leave is foreseeable (based on an expected birth, placement for adoption or foster care, or planned medical treatment) the employee must provide notice to the district/regional office of his or her intention to take leave as soon as possible but not less than 30 days before the date leave is to commence. Exceptions to this 30-day requirement may be made when the leave approving official determines the circumstances warrant such an exception. However, if the need for leave is foreseeable, and the employee fails to give 30 days' notice with no reasonable excuse for the delay of notification, the district/regional office may delay the taking of leave until at least 30 days after the date the employee provides notice of his or her need for family and medical leave.

b. Time Limits for Notification When Need for Leave Is Not Foreseeable. If the need for leave was not foreseeable 30 days before the event requiring leave commences (e.g., an unexpected medical emergency or the unexpected availability of a child for adoption or foster care), the employee must provide such notice as is practicable. Employees are encouraged to give the district/regional office as much notice as is possible to provide ample opportunity for planning the work during the employee's absence.

c. Method of Notification. Employees may provide notice of intention to take leave in person, in writing, or by telephone, FAX, telegraph, or other electronic means. In emergency situations, notice from an employee's spouse, domestic partner, family member, or other responsible party will suffice until the employee is able to contact the agency to provide additional information.

6. Using Leave Under the Family and Medical Leave Act.

a. Using Leave on an Intermittent or Reduced Schedule Basis. Under some circumstances the employee must obtain approval for intermittent leave or leave on a reduced leave schedule; in other situations employees may choose to take leave in this manner.

(1) An employee must obtain approval to take leave on an intermittent basis or under a reduced leave schedule for the birth of a child or for placement for adoption or foster care.

(2) An employee may choose to take leave on an intermittent basis or under a reduced leave schedule when medically necessary to care for his or her spouse, son, daughter, or parent with a serious health condition or for the employee's own serious health condition. An employee's intermittent leave or reduced leave schedule necessary to care for a spouse, son daughter, or parent includes not only a situation where the individual's health condition itself is intermittent, but also where an employee is only needed intermittently because care is also provided by a third party.

(a) The employee must consult with the district/regional office and make a reasonable effort to schedule treatment so as not to disrupt unduly the operations of the agency, subject to the approval of the health care provider.

(b) The district/regional office may place the employee temporarily in an available alternative position in the same commuting area for which the employee is qualified that can better accommodate recurring periods of leave. For the purposes of this paragraph, an alternate position need not consist of equivalent duties. Upon return from leave, the employee shall be entitled to be returned to his or permanent position or an equivalent position, as provided in 5 CFR Sec. 630.1208(a). The district/regional office shall determine the available alternate position that has equivalent pay and benefits consistent with Federal laws including the Rehabilitation Act of 1973 and the Pregnancy Discrimination Act of 1978.

(c) The anticipated duration of the intermittent leave or leave under a reduced leave schedule must be clearly understood by both the employee and the district/regional office. The employee must be informed of any major changes in duties and responsibilities that may result from reassignment to an alternative position. Upon return from leave, the employee shall be entitled to be returned to his or her permanent position or an equivalent position as provided in 5 CFR Sec. 630.1208(a). The district/regional office shall determine the available alternate position that has equivalent pay and benefits consistent with Federal laws, including the Rehabilitation Act of 1973 and the Pregnancy Discrimination Act of 1978.

b. Other Forms of Leave Taken in Conjunction With FMLA.

(1) Paid Leave. An employee may elect to substitute the following types of paid time off: annual leave and sick leave, and leave made available to the employee under the Voluntary Leave Transfer or Voluntary Leave Bank programs, for leave without pay under the FMLA, consistent with applicable laws and regulations. Employees may use specified amounts of sick leave for a family member's medical emergency - see Appendix A, and as allowed by law, for adoption - see Appendix B. The employee may not be denied the right to substitute paid time off, or required to substitute paid time off, for leave without pay under the FMLA.

An employee may not retroactively substitute paid leave for any or all of the period of leave without pay to be taken under the FMLA, consistent with current law and regulations. An employee may not retroactively substitute paid time off for leave without pay under the FMLA.

(2) Leave which Exceeds that Provided by the FMLA. Leave taken under the FMLA is an entitlement. An employee may need more leave than is provided by the FMLA; however, the employee must obtain approval and/or meet statutory requirements to take additional leave or other periods of paid time off (i.e., annual leave, sick leave, advanced annual or sick leave, other leave without pay, and leave made available to an employee under the voluntary leave transfer or leave bank programs).

7. Medical Certification.

a. Requirements. Employees who use leave of more than 3 days duration under the provisions of the FMLA will be required to submit medical certification issued by the health care provider supporting the need for the leave. Local commander's policies will govern whether leave of 3 days or less will require submission of medical certification. The certificate will be submitted in a timely manner. The form provided at Appendix E may be used for this purpose. The written medical certificate shall include:

(1) The date the serious health condition commenced;

(2) The probable duration of the serious health condition or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity.

(3) The appropriate medical facts within the knowledge of the health care provider regarding the serious health condition, including a general statement as to the incapacitation, examination, or treatment that may be required by a health care provider;

(4) For a Family Member's Medical Condition.

(a) A statement from the health care provider that the spouse, son, daughter, or parent of the employee requires psychological comfort and/or physical care; needs assistance for basic medical, hygienic, nutritional, safety, or transportation needs or in making arrangements to meet such needs; and would benefit from the employee's care or presence; and

(b) A statement from the employee on the care he or she will provide and an estimate of the amount of time needed to care for his or her spouse, son, daughter, or parent;

(5) For Intermittent Leave of Leave on a Reduced Leave Schedule for Planned Medical Treatment. The dates (actual or estimates) on which such treatment is expected to be given, the duration of such treatment, and the period of recovery, if any, or specify that the serious health condition is a chronic or continuing condition with an unknown duration and whether the patient is presently incapacitated with the likely duration and frequency of episodes of incapacity.

(6) The written medical certification will not include personal or confidential information beyond that required above. If an employee submits a completed medical certification signed by the health care provider, the district/regional office may not request new information from the health care provider. However, a health care provider representing the district/regional office or under administrative oversight of the same, may contact the health care provider who completed the medical certification, with the employee's permission, for purposes of clarifying the medical certification.

b. Questionable Requests. If the district/regional office doubts the validity of the medical certification submitted by the employee, the district/division office may require, at its expense, medical certification from a second health care provider selected by the district/regional office. If the second opinion differs from the original certification, the district/regional office may require, at its expense, certification from a third health care provider chosen jointly by the district/regional

office and the employee. The third opinion is final and binding on the employee and the district/division office. Any health care provider designated or approved by the district/regional office shall not be employed by the district/regional office or be under the administrative oversight of the district/regional office on a regular basis unless the district/regional office is located in an area where access to health care is extremely limited.

c. Provisional Approval Without Medical Certification. If an employee is unable to provide the requested medical certification before leave is to begin, the district/regional office must grant leave on a provisional basis (i.e., "provisional leave") pending final written medical certification. If the agency questions the validity of the initial certification provided by the employee, the agency will grant "provisional leave" pending final certification. If, ultimately, the employee is unable to provide the required certification, the leave granted provisionally will be charged as absence without leave (AWOL) if appropriate, or, the employee may request that the leave be charged as LWOP or to the appropriate leave account. Disciplinary action will be considered for any employee who knowingly provides false certification of the need for leave.

d. Maintaining Entitlement Through Examination. In order to maintain entitlement to leave under the FMLA, the employee or his or her spouse, son, daughter, or parent, as appropriate, must comply with any requirement from the district/regional office to submit to examination (though not treatment) by a health care provider (other than the individual's health care provider) to obtain a second or third medical certification at the expense of the district/regional office. If the individual refuses to submit to such examination and the employee fails to provide a completed medical certification to the district/regional office, the employee may be denied leave under the FMLA.

e. Medical Recertification.

(1) For leave taken for the purposes of pregnancy, chronic conditions, or long-term conditions under the continuing supervision of a health care provider, the district/regional office may require subsequent medical recertification of the continuing need for leave from the health care provider. This

recertification will be obtained at the agency's expense and may be obtained on a periodic basis but not more often than every 30-calendar days.

(2) For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the district/regional office may not require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity, the district/regional office may not request recertification until that period has passed.

(3) If the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification, the district/regional office may require subsequent medical certification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification,

9. Evidence Required in Adoption Cases. The district/regional office may require employees to provide evidence that is administratively acceptable to the employer in support of an employee's notification of his/her intent to use FMLA leave for adoption related purposes.

10. Protection of Employment and Benefits. An employee who takes family and medical leave is entitled, upon return from the leave, to be returned to the same position or to an "equivalent position with equivalent benefits, pay, status, and other terms and condition of employment" as defined in 5 CFR 630.1208. It is intended that the employee will be returned to the same position. In exceptional cases where returning the employee to the same position would impose extreme hardship on the district/regional office, the employee will be placed in a position that offers equivalent responsibilities as well as equivalent benefits, pay status, and other terms and conditions of employment. An equivalent position is not one that is merely comparable or similar but one that corresponds to the duties and other terms, conditions and privileges of the employee's previous position. An employee is not entitled to be returned to the same or equivalent position if the employee would not otherwise have been

employed in that position at the time the employee returns from leave. The employee may not be returned to an equivalent position where written notification has been provided that the equivalent position will be affected by a reduction in force if the employee's previous position is not affected by a reduction in force.

11. Medical Clearance for Return to Duty Following Leave Under the FMLA.

a. Districts/regional offices may establish requirements that similarly-situated employees (i.e., those in the same occupational, with the same serious health condition) obtain written medical certification from the health care provider that the employee is able to perform the essential functions of his or her position. The employee's return may be delayed until the medical certification is provided. Requirements for the medical certification are the same as those provided in paragraph 7. No second or third opinion on the medical certification to return to work may be required. Medical certification will not be required when an employee takes leave intermittently or under a reduced leave schedule.

b. Districts/regional offices will inform employees of a requirement to obtain written medical certification before leave commences or to the extent practicable in emergency medical situations and will pay the expenses for obtaining the written medical certification. An employee's refusal or failure to provide written medical certification may be grounds for appropriate disciplinary or adverse action.

12. Other Provisions.

a. Grievance Procedure. If an employee believes the district/regional office has not fully complied with the rights and requirements provided by the Family and Medical Leave Act and this pamphlet, the employee may file a grievance under the agency grievance procedure or an appropriate negotiated grievance procedure.

b. Health Benefits. Under the Federal Employees Health Benefits (FEHB) program, health benefits coverage continues for up to 365 days in a non-pay status. Employees who are granted leave under the Family and Medical Leave Act (FMLA) that does not exceed the 365 days of continued coverage provided by the FEHB law may choose to incur a debt and pay their contributions when they return to pay and duty status. However, an employee whose

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approved leave under FMLA exceeds the 365 days of continued coverage must pay their share of the premiums directly to the employing office on a current basis. Employees whose coverage is terminated for nonpayment are not penalized when they return to duty for their failure to make payments. They may reenroll upon their return to pay and duty status in the same way as employees whose coverage terminates because of the expiration of the period of continued coverage allowed during nonpay status.

APPENDIX D

VOLUNTARY LEAVE TRANSFER PROGRAM

1. Purpose. This Appendix describes provisions of the Voluntary Leave Transfer Program under which the unused accrued annual leave of one employee may be transferred for use by another employee who needs such leave because of a medical emergency.

2. Definitions.

a. "Leave Donor" means an employee whose voluntary written request for transfer of annual leave to the annual leave account of a leave recipient is approved by his or her own employing agency.

b. "Leave Recipient" means a current employee for whom the activity commander has approved an application to receive annual leave from the annual leave account of one or more leave donors.

c. "Medical Emergency" means a medical condition of an employee or a family member of the employee that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of paid leave.

d. "Family Member" means the following relatives of the employee:

(1) A spouse and his/her parents;

(2) Children, including adopted children, and their spouses;

(3) Parents;

(4) Brothers and sisters, and their spouses; and

(5) An individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

e. "Available Paid Leave" means accrued or accumulated annual or sick leave and recredited and restored annual or sick leave under 5 U.S.C., Subpart E. Available paid leave does not include annual or sick leave advanced to an employee, or leave accrued by an employee while in a shared leave status but not yet been transferred for use (see paragraphs 6c and 6d below).

f. "Paid Leave Status" means the administrative status of an employee while the employee is using annual or sick leave accrued or accumulated under the provisions of Title 5 U.S.C., Chapter 63, Subchapter 1 (Annual and Sick Leave).

g. "Shared Leave Status" means the administrative status of an employee while the employee is using transferred leave under a leave sharing program (or leave transferred from a leave bank for locations participating in a leave bank program.)

3. Responsibilities.

a. The activity commander is delegated authority to select leave recipients consistent with Office of Personnel Management rules and regulations and administer the leave transfer program in accordance with established instructions and record keeping procedures. Authority to select leave recipients may not be redelegated. The commander may establish a committee to assist in the decision making process. While the commander's decision on selection of recipients is final, reconsideration will be given if an individual's circumstances change.

b. The immediate supervisor must endorse a request from a subordinate employee to be a leave recipient. This requirement reflects the supervisor's inherent right to approve when and to what extent annual leave may be taken. The immediate supervisor is also responsible for assisting in alerting potential donors of the need for leave donations, monitoring the situation throughout the leave usage, determining when the leave recipient is no longer affected by the medical emergency, and reporting eligibility termination to the servicing CPAC/Human Resources Office or other office designated by local policy to administer the program.

c. The servicing CPAC/Human Resources Office or other office will maintain records concerning the administration of the voluntary leave transfer program and may be required by the Office of Personnel Management to report information necessary to evaluate the effectiveness of the program. The CPAC/Human Resources Office or other office will perform the following functions:

(1) Maintain records of the number of applications approved for medical emergencies affecting each employee and the number of applications approved for medical emergencies affecting an employee's family member;

(2) Maintain records of the grade or pay level of each leave recipient, the gender of each leave recipient, and the total amount of transferred annual leave used by each leave recipient;

(3) Maintain a record of each donor and the amount of leave s/he donated. Such records are necessary for situations in which leave must be restored to the donor.

(4) Notify the Defense Finance and Accounting Service (DFAS) payroll office in writing when individual donations are made (name, social security number, 7 digit personnel code and payroll block of donor, annual leave, amount donated, name and payroll block of recipient).

4. Procedures.

a. Submitting a Request to Become a Leave Recipient.

(1) An employee who is affected by a medical emergency may make written application to become a leave recipient. If an employee is not capable of making application on his/her own behalf, a personal representative of the potential leave recipient may make the written application on his or her behalf. CELRD Form 1115R may be used for this purpose but is not required.

(2) Each application must be accompanied by the following information:

(a) The name, position title, and grade or pay level of the potential leave recipient;

(b) The reasons transferred leave is needed, including a brief description of the nature, severity, and anticipated duration of the medical emergency, and if it is a recurring one, the approximate frequency of the medical emergency affecting the potential leave recipient; and

(c) Certification from one or more physicians; or other appropriate experts, with respect to the medical emergency, if warranted by the situation.

(3) If the employing activity requires an employee who requests to become a leave recipient to submit certification from two or more sources under subparagraph (2)(c) above, the activity will ensure, either by direct payment to the expert involved or by reimbursement, that the employee is not required to pay for the expenses associated with obtaining certification from more than one source,

b. Review and Approval/Disapproval of Requests to Become Leave Recipients.

(1) Applications will be submitted to the employee's immediate supervisor. If the supervisor approves of the use of annual leave (see paragraph 3b of this Appendix), he/she will forward the request through the chain of command to the servicing CPAC/Human Resources Office or other office designated by local policy to administer the program.

(2) The designated office will review the application To verify that the leave recipient has been affected by a medical emergency and that the absence from duty without available paid leave, disregarding any advanced leave, is or is expected to be at least 24 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, at least 30% of the average number of hours of work in the employee's biweekly scheduled tour of duty). In making a determination as to whether a medical emergency is likely to result in a substantial loss of income, factors other than whether the absence from duty without available paid leave, disregarding any advanced leave, is or is expected to be at least 24 hours (or the appropriate number of hours for other than full time employees) may not be considered.

(3) After review by the employee's immediate supervisor and the office designated for administering the leave transfer program, the application will be forwarded to the commander for approval/disapproval. The immediate supervisor will notify the potential leave recipient or the person requesting leave on the employee's behalf of the commander's decision within 10 days (excluding Saturdays, Sundays and legal public holidays) after the date the application was received, whenever possible, but in no case later than 10 work days after the commander has decided that, (1) the application has been approved, and (2) other

employees may request the transfer of annual leave to the account of the leave recipient. If the request is disapproved, the same time frame for notification applies and the reasons for disapproval will be provided.

c. Notification to Employees of Opportunity to Donate Leave.

The office designated to administer the program, in coordination with the leave recipient's immediate supervisor, will publicize the need for donation of annual leave. In publicizing the need for donated leave, the receiving employee's right to privacy must be considered. Publicity will generally be limited initially to the local Corps activity. If insufficient donations are received locally, consideration will be given to extending the publicity Division-wide or Corps-wide, as appropriate. In cases of catastrophic illness, initial publicity beyond the immediate activity may be appropriate.

d. Submitting Requests to Donate Leave.

(1) An employee who wishes to donate leave may submit a voluntary written request to the office designated to administer the program that a specified number of hours of his/her accrued annual leave be transferred from his or her annual leave account to the annual leave account of a specified leave recipient. CELRD Form 1100R may be used for this purpose.

(2) Annual leave may be transferred only to a leave recipient employed by the leave donor's employing agency (for Corps of Engineers employees, Department of the Army is the agency) except when:

(a) A family member of a leave recipient is employed by another agency and requests the transfer of annual leave to the leave recipient;

(b) In the judgment of the leave recipient's employing agency, the amount of annual leave transferred from leave donors employed by the leave recipient's employing agency may not be sufficient to meet the needs of the leave recipient; or

(c) In the judgment of the leave recipient's employing agency, acceptance of leave transferred from another agency would further the purpose of the voluntary leave transfer program.

(3) Employees who wish to donate leave to a recipient in another agency under circumstances described in paragraph 4d(2) above should contact the servicing CPAC/Human Resources Office. The servicing CPAC/Human Resources Office will be responsible for following CFR provisions (Section 630.906) in transferring appropriate amounts of leave.

(4) Annual leave will not be transferred to a leave donor's immediate supervisor.

e. Transfer of Leave. Annual leave transferred to an approved leave recipient may be substituted retroactively for periods of leave without pay (LWOP) or used to liquidate an indebtedness for advanced annual or sick leave granted on or after a date recognized by the Corps activity as the beginning of the period of medical emergency for which LWOP or advanced annual or sick leave was granted.

5. Limitations on Donation of Annual Leave.

(a) In any one leave year, a leave donor may donate no more than a total of one-half of the amount of annual leave he or she would be entitled to accrue during the leave year in which the donation is made.

(b) In the case of a leave donor who is projected to have annual leave that otherwise would be subject to forfeiture at the end of the leave year, the maximum amount of annual leave that may be donated during the leave year shall be the lesser of:

(1) One-half the amount of annual leave he/she would be entitled to accrue during the leave year in which the donation is made, or

(2) The number of hours remaining in the leave year (as of the date of the transfer) for which the leave donor is scheduled to work and receive pay.

(c) The limitations described in paragraph 5(a) and (b) above may be waived in accordance with criteria provided at Appendix H. Waivers will be documented in writing.

6. Accrual of Annual and Sick Leave. While an employee is in a shared leave status, annual and sick leave will accrue to the credit of the employee at the same rate as if the employee were in a paid leave status, except that:

a. The maximum amount of annual leave that may be accrued by an employee while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty); and

b. The maximum amount of sick leave that may be accrued by an employee while in a shared leave status in connection with any particular medical emergency may not exceed 40 hours (or, in the case of a part-time employee or an employee with an uncommon tour of duty, the average number of hours of work in the employee's weekly scheduled tour of duty).

c. Any annual or sick leave accrued by an employee under these provisions:

(1) Will be credited to an annual or sick leave account, as appropriate, separate from the regular leave account of the employee; and

(2) Will not become available for use by the employee, and may not otherwise be taken into account until, under paragraph d below, it is transferred to the appropriate leave account of the employee.

d. Any annual or sick leave accrued by an employee under this provision will be transferred to the appropriate regular leave account of the employee:

(1) As of the beginning of the first applicable pay period beginning on or after the date on which the employee's medical emergency terminates; or

(2) If the employee's medical emergency has not yet terminated, once the employee has exhausted all transferred leave made available to him or her under the leave transfer program.

e. If the employee's medical emergency terminates because the leave recipient's Federal service is terminated, no leave will be credited to the employee under this provision.

7. Use of Transferred Annual Leave.

a. A leave recipient may use annual leave transferred to his or her annual leave account only for the purpose of a medical emergency for which the leave recipient was approved.

b. Except as provided under the description for accrual of annual and sick leave (paragraph 6), during each biweekly pay period a leave recipient is affected by a medical emergency, he or she shall use any accrued annual leave (and sick leave, if applicable) before using transferred annual leave.

c. The approval and use of transferred annual leave shall be subject to all of the conditions and requirements imposed for the approval and use of annual leave, except that transferred annual leave may accumulate without regard to the limitation normally imposed on accrual and carry over of annual leave.

d. Transferred annual leave may not be:

(1) Transferred to another leave recipient except as provided for in paragraph 8c below.

(2) Included in a lump-sum payment.

(3) Made available for recredit upon reemployment by a Federal agency.

8. Termination of Medical Emergency.

a. The medical emergency affecting a leave recipient shall terminate:

(1) When the leave recipient's Federal employment is terminated;

(2) At the end of the biweekly pay period in which the leave recipient's organization receives written notice from the leave recipient or from a personal representative of the leave recipient that the leave recipient is no longer affected by a medical emergency;

(3) At the end of the biweekly pay period in which the leave recipient's organization determines, after written notice and opportunity for the leave recipient (or, if appropriate, a personal representative of the leave recipient) to answer orally or in writing, that the leave recipient is no longer affected by a medical emergency; or

(4) At the end of the biweekly pay period in which the leave recipient's organization receives notice that the Office of Personnel Management has approved an application for disability retirement for the leave recipient.

b. The leave recipient's employing activity shall continuously monitor the status of the medical emergency affecting the leave recipient to ensure that the leave recipient continues to be affected by a medical emergency.

c. When the medical emergency affecting a leave recipient terminates, no further requests for transfer of annual leave to the leave recipient may be granted, and any unused transferred annual leave remaining to the credit of the leave recipient shall be restored to the leave donors as provided in paragraph 9 below.

d. Commanders may deem a medical emergency to continue for the purpose of providing a leave recipient an adequate period of time within which to receive donations of annual leave.

9. Restoration of Transferred Annual Leave.

a. Any transferred annual leave remaining to the credit of a leave recipient when the medical emergency terminates shall be restored to the extent administratively feasible by transfer to the annual leave accounts of leave donors who, on the date leave restoration is made, are employed by a Federal agency. The amount of unused transferred annual leave to be restored to each leave donor will be determined as follows:

(1) First, divide the number of hours of unused transferred annual leave by the total number of hours of annual leave transferred to the leave recipient;

(2) Second, multiply the ratio obtained from the computation in 9a(1) above by the number of hours of annual leave transferred by each leave donor eligible for restoration of leave.

(3) Third, round the results obtained from the computation in 9a(2) above to the nearest hour.

b. If the total number of eligible leave donors exceeds the total number of hours of annual leave to be restored, no unused transferred leave shall be restored. In no case shall the amount of annual leave restored to a leave donor exceed the amount transferred to the leave recipient by the leave donor.

c. If the leave donor retires from Federal service, dies, or is otherwise separated from Federal service before the date unused transferred annual leave can be restored, the employing agency of the leave recipient shall not restore the unused transferred annual leave.

d. At the election of the leave donor, unused transferred annual leave restored to the leave donor may be restored by:

(1) Crediting to the leave donor's annual leave account in the current leave year;

(2) Crediting to the leave donor's annual leave account effective as of the first day of the first leave year beginning after the date of election; or

(3) Donating such leave in whole or part to another leave recipient.

e. If the leave donor elects to donate only part of his or her restored leave to another leave recipient under paragraph 9d(3) above, the donor may elect to have the remaining leave credited to the leave donor's annual leave account under paragraph 9d(1) or (2) above.

f. Transferred annual leave restored to the account of a leave donor under paragraph 9d(1) or (2) above shall be subject to the limitation imposed by law at the end of the leave year in which the restored leave is credited to the leave donor's annual leave account.

g. If the leave recipient elects to buy back annual leave as a result of a claim for an employment-related injury approved by the Office of Workers' Compensation Programs, and the annual leave was transferred under the Voluntary Leave Transfer Program, the amount of annual leave bought back by the leave recipient will be restored to the leave donor(s).

10. Prohibition of Coercion.

Supervisors must be alert to the potential or perception of coercion. An employee may not directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce, any other employee for the purpose of interfering with any right the employee may have regarding donating, receiving, or using annual leave. This prohibition includes promising to confer or conferring any benefit (such as an appointment or promotion or compensation) or effecting or threatening to effect any reprisal (such as deprivation of appointment, promotion, or compensation).